IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

S.B. CRIMINAL MISC. PETITION NO.684/2005
(Mohar Singh & Ors. Vs. State)

Date of order : 18.10.2006

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. S.L. Jain, for the petitioners.
Mr. S.N. Tiwari, Public Prosecutor.
Mr. R.S Sandhu with
Mr. B.S. Sandhu, for the non-petitioner.

The present misc. petition under Section 482 Cr.P.C. has been filed by the petitioner for quashing of FIR No.130/2001 registered against the petitioners at Police Station Suratgarh.

It is contended by the learned counsel for the petitioners that as per the allegations made in the complaint, the complainant's husband was having agricultural land in Chak 28 PBN, Tehsil Suratgarh ad-measuring 36 bighs in joint khata. It was alleged that actually there is 72 bighas land and her husband share was 36 bighas, who died on 29.5.1999. She being

the only legal heir, got her land recorded in revenue record. It was further alleged in the compliant that no issue was born out of the wedlock, therefore, she had taken one Singara Singh in adoption about 40 years back and she is living with Singara Singh. In the complaint it was alleged that the petitioners filed revenue suit in the Court of Sub-Divisional Magistrate, Suratgarh on 20.10.1999 for declaration that they have a Will of Nar Singh and land of Nar Singh be recorded in their names. On receiving the summons from the court of Sub-Divisional Magistrate, as per the complaint, the complainant made an eqnuiry and in enquiry, it was found that a forged and fabricated will was prepared and on that basis suit was filed. No such will was executed by her husband in favour of the present petitioners. Therefore, it was alleged that the petitioners have committed offence under Sections 420, 120, 467 and 468 I.P.C. It is contended by the learned counsel for the petitioners that from a bare perusal of FIR, it is clear that no offence is made out. It is contended by the learned counsel for the petitioners that the revenue court has not adjudicated the matter finally, therefore, it cannot be said that will is forged and fabricated. Thus, the question of forgery of documents is to be decided first and if finding is recorded, then, the complainant has right to lodge complaint. Counsel for the petitioners has also stated that they are residents of Punjab and there is

no territorial jurisdiction to investigate the matter in Rajasthan but the trial court has sent the complaint under Section 156(3) Cr.P.C. for investigation to the Police Station Suratgarh. It is further contended that in this case on the basis of FSL report, the investigating agency is filing challan against the petitioners. There is no original will on record nor any original will was sent to FSL for examination, then, how the petitioners can be prosecuted upon a false case. It is further contended that so called will is not on record and as per the information of the petitioners, the police is going to file challan against the petitioners for offence under Section 420, 467, 468 and 120 I.P.C. Learned counsel for the petitioners has vehemently argued that so called FSL report which is the sole basis of investigation has been obtained while sending secondary evidence and not the original will because it is not on record in the investigation. More so, he has raised certain grounds with regard to validity of FSL report.

Per contra, learned Public Prosecutor vehemently opposed this petition and argued that in this case there is no stay granted by this Court and most of the petitioners have already been enlarged on bail by the trial court and investigation is complete and petitioners are at liberty to raise their objections in the event of filing challan against

them. He has also invited the attention of this Court towards the judgment of Apex Court reported in 1992 Suppl (1) SCC 335 (State of Haryana Vs. Bhajanlal) wherein it has been held that while exercising the power under section 482 Cr.P.C. to prevent the abuse of the process of the court and otherwise to secure the ends of justice, the High Court is required to see whether allegations made in the FIR or the complaint even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, then, FIR can be quashed. In this case in whole of the investigation there is material on record. So also, from a bare perusal of the complaint, it is revealed that allegation for preparation of the forged will has been levelled against the petitioners and therefore, investigation was made.

With regard to ground of territorial jurisdiction of filing complaint, it is contended by the learned counsel for the complainant that admittedly a revenue suit was filed by the petitioners in the court of Sub-Divisional Magistrate, Suratgarh for declaration that on the basis of will of late Nar Singh, the said land may be recorded in their names. If the land is situated in Suratgarh and the suit was filed by the petitioners claiming their names to be recorded in the revenue record as successors of late

Nar Singh on the basis of will, then, the ground taken by the petitioners with regard territorial jurisdiction has no force.

I have perused the case-diary and considered the contentions made by learned counsel for the parties.

It is true that as per the verdict of Hon'ble Supreme Court given in Bhajanlal's case (supra) and the language of Section 482 Cr.P.C., this Court, of course, has inherent power to quash the complaint or FIR but at the same time, it is the duty of the Court to see whether prima facie case is made or not upon perusal of the complaint or FIR. In this case, the FIR has been filed by the complainant alleging that no will was executed by her husband. Likewise on the basis of so-called Will admittedly suit was filed by the petitioners in the court of Sub-Divisional Magistrate, Suratgarh. Therefore, there is no force in the contentions made by the learned counsel for the petitioners that there is no territorial jurisdiction to register first information report against the petitioners. Thus, the ground with regard to territorial jurisdiction taken by the learned counsel for the petitioners is rejected. The petitioners have proceeded to claim their rights under the said Will, which is allegedly disputed by the complainant Therefore, prima facie, it is a case of investigation

and it is not a case in which any interference is warranted by this Court at this stage. Though certain objections are raised by the learned counsel for the petitioners with regard to investigation. However, as per the judgment of Hon'ble Supreme Court in Bhajanlal's Case (supra), if prima facie case is made out upon the perusal of the complaint, then, there is no question of exercising power under Section 482 Cr.P.C. for quashing of FIR. However, the grounds raised by the petitioners in this petition can very well be agitated by them in the event of filing challan against them and at the stage of framing of charges against them. It is not proper stage to interfere with the investigation to quash the FIR.

In these circumstances, this misc. petition is dismissed.

(GOPAL KRISHAN VYAS), J.

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